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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1909

No. 858

JERRY E. COLLINS,

Petitioner,

vs.

SOUTHERN PACIFIC COMPANY,
a corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit.

THOMAS C. RYAN,
DANIEL V. RYAN,
806 Phelan Building
San Francisco, California
Attorneys for Petitioner.

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(a) The opinion of the Court of Appeals is not yet printed in the official reports. Said opinion and the judgment of said court is appended hereto as Appendix A.

(b) The grounds on which the jurisdiction of this court is invoked is the question of whether the presence of oil or grease on a grabiron of a railroad car

constitutes a violation of the Federal Safety Appliance Acts, 45 U.S.C.A., Sections 4 and 11[1] has never been passed upon by this court. It is a question of great moment to railroad workers and to the railroad industry and should be decided by this court so that the courts of our county, both Federal and State, may properly administer the Federal Employers' Liability Act and the Federal Safety Appliance Acts as far as this question is concerned. The court also has jurisdiction in the exercise of its power of supervision over the administration of justice in the Federal Courts (*Thiel v. Southern Pacific Co.*, 328 U.S. 217, 225, 90 L. ed., 1181, 1187).

(I) The judgment of the United States Court of Appeals which is sought to be reviewed was entered on February 6, 1961.

(II) There has been no petition for a rehearing.

(III) The statutory provisions believed to confer on this court jurisdiction to review the judgment of the Court of Appeals by Writ of Certiorari are 28 U.S.C.A., Sections 1254 and 2101(c) and this petition is filed pursuant to Rules 19(b) and 21 of the Supreme Court Rules.

(c) The question presented for review is whether the presence of oil or grease on the grabirons or ladders of a railroad car constitutes a violation of the Federal Safety Appliance Acts (45 U.S.C.A., Sections 4 and 11).

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[1]The provisions of the statutes are set out in Appendix B to this petition.

(d) The statutes involved in the case are the Federal Employers' Liability Act, 45 U.S.C.A., 51 et seq., the Federal Safety Appliance Acts, 45 U.S.C.A., Sections 4 and 11, and, indirectly, the Federal Boiler Inspection Act, 45 U.S.C.A., Section 23.[2]

(e) *Statement of the case.* Petitioner, Jerry E. Collins, a switchman employed by the respondent, Southern Pacific Company, was injured on August 3, 1959, at San Francisco, California, when he slipped on grease while climbing a ladder on a box car. He brought this action against his employer in the United States District Court, for the Northern District of California, Southern Division, alleging in the first count of his complaint a cause of action for a violation of the Federal Safety Appliance Acts, 45 U.S.C.A., Sections 4 and 11. The second count of his complaint stated a cause of action under the Federal Employers' Liability Act, 45 U.S.C.A., Section 51. The trial court granted respondent's motion to dismiss the first count of the complaint on the ground that it did not state a cause of action for a violation of said Safety Appliance Act (R. 9 and 17). The case then proceeded to trial on the second cause of action under the Federal Employers' Liability Act and a jury returned a verdict in favor of the respondent (R. 10). Petitioner's motion for a new trial on the ground, among others, that the court erred in dismissing the first cause of action of his complaint based on the Safety Appliance

[2]The provisions of the Federal Employers' Liability Act and the Boiler Inspection Act are set out in Appendix C of this petition.

Act was denied (R. 12 and 13). Petitioner then appealed to the United States Court of Appeals for the Ninth Circuit, which court on the 6th day of February, 1961 affirmed the judgment of the District Court. The case is one of first instance in the Supreme Court. The question is whether the presence of grease or oil on the grabiron of a box car renders said box car unsafe and constitutes a violation of the Safety Appliance Act (45 U.S.C.A., Sections 4 and 11). The Court of Appeals relied on the case of *Ford v. New York, N.H. & H. R.R.*, 54 Fed. 2d 342 ('31, Cir. 2) holding that the presence of grease on a handhold did not constitute a violation of the Safety Appliance Act and on the case of *Raudenbush v. Baltimore & Ohio R.R. Co.*, 160 Fed. 2d 363 (Cir. 3, '47) holding that the presence of snow on the sill step of a gondola car did not constitute a violation of the Safety Appliance Act. The petitioner relies mainly upon the case of *Lilly v. Grand Trunk Western R.R.*, 317 U.S. 481, 87 L. ed. 411 ('43) and on *Minehart v. Southern Pacific Co.*, 136 Cal. App. 2d 486, 288 P. 2d 999 ('55) in support of his contention that grease on a grabiron constitutes a violation of said Safety Appliance Act.

(g) The basis for Federal jurisdiction in the United States District Court is found in the Federal Employers' Liability Act, 45 U.S.C.A., Section 56.

(h) *Argument in Support of Petition for Writ of Ceritorari.*

Sections 4 and 11 of the Safety Appliance Act provide that it shall be unlawful for any railroad com-

pany to use any car in interstate commerce that is not provided with secure grabirons or handholds. The courts have held that the word "secure" as used in said sections means "safe".

Davis v. Reynolds, 280 F. 363, Cert. denied, 258 U.S. 627, 66 L. ed. 798;

Knight v. Chicago, N.W. R. Co., 3 Ill. App. 2d 502, 123 N.E. 2d 128 (App. Ct. of Ill. '54).

In the *Davis* case a sill step had been worn slick from use. The court held that the slipperiness of the step made it unsafe, and therefore a violation of said sections of the Safety Appliance Act.

In the *Knight* case the plaintiff was injured when his foot slipped on the wooden step of a caboose. The step was worn and rounded and the edges thereof were smooth. This made the step slippery and was held to be an unsafe condition and thus a violation of the Safety Appliance Act. The *Knight* case cited the *Davis* case and *Edwards v. Southern Ry. Co.*, 52 Ga. App. 557, 184 S.E. 370, 380 ('36). In that case, an engineer was killed when he slipped on a slippery footboard of an engine. The court held that such slippery condition rendered the footboard unsafe and thus violated said Safety Appliance Act. It is petitioner's contention that if the slippery condition of said steps caused them to become unsafe and thus violated the Safety Appliance Acts, it is likewise true that the presence of grease or oil on a grabiron causes said grabiron to become slippery and dangerous and unsafe and, likewise, causes a violation of the Safety Appliance Act.

This Court has long ago abandoned the proposition that it was necessary for an injured railroad worker to prove a physical defect in a safety appliance before he could prove a case under the Safety Appliance Act. (See the *Lilly* case hereinafter cited.) The Court of Appeals in the instant case cites the case of *Atchison, Topeka & Santa Fe R. Co. v. Scarlett,* 300 U.S. 471, 81 L. ed. 748 ('37). That case did not involve the presence of grease or oil on a grabiron. In that case the plaintiff, a railroad brakeman, fell to the ground while descending a box car ladder when his foot slipped on a round brace rod attached to the side of the car immediately behind the ladder. The court stated that the rules of the Interstate Commerce Commission did not prohibit such type of construction on a box car and that, therefore, there was no violation of the Safety Appliance Act. However, the court, in support of its decision, cited (p. 487) the cases of *Ford v. N.Y., N.H. & H. R. Co.,* 54 F. 2d 342, supra; *Chicago R.I. & P. R. Co. v. Benson,* 352 Ill. 195, 199, 185 N.E. 244, and *Slater v. Chicago St. P. M. & O. R. Co.,* 146 Minn. 390, 392, 393, 178 N.W. 813.

The plaintiff in the *Ford* case fell and was injured while attempting to board a locomotive tender because of grease on the grabiron or handhold. He sued under both the Safety Appliance Act, 45 U.S.C.A., Sec. 4, and the Boiler Inspection Act, 45 U.S.C.A., Sec. 23, and his claim was rejected under both Acts.

In the *Slater* case plaintiff was denied a recovery when he was injured when he tripped over the displaced cover of an ice bunker while walking along the running board of a box car.

In the *Benson* case a switchman was injured when his glove became caught on a piece of fence wire with a hook on the end that had been wrapped around the grabiron of a freight car. The court held it was no violation of the Safety Appliance Act.

Although it was not necessary for its decision, because the *Scarlett* case did not involve the question of grease on a grabiron, this court, nevertheless, apparently, approved of the decision of the Second Circuit in the *Ford* case which held that the presence of grease on the grabiron of the tender of a locomotive violated neither the Safety Appliance Act nor the Boiler Inspection Act. **By a later decision of this court, however, the court did repudiate the *Ford* case and, in effect, the other lower court cases cited in the *Scarlett* case,** holding that it was necessary to prove a structural defect in a safety appliance before a violation of the Boiler Inspection or Safety Appliance Acts could be made out by an injured railroad worker.

See:

Lilly v. Grand Trunk Western R. Co., 317 U.S. 481, 87 L. ed. 411.

In that case a brakeman fell from the top of a locomotive tender when he slipped on ice that was located on the apron of the tender. The court held that the presence of ice on the tender rendered it unsafe, and because of said fact rendered the railroad liable to the plaintiff because his injury was caused by a violation of the Boiler Inspection Act. The court in aid of its decisions cited an interstate commerce regulation requiring that said apron be kept clean at

all times. However, as far as the instant case is concerned, the important part of the decision in the *Lilly* case is that the court directly overruled the *Ford* case, supra, and held that the presence of a slippery substance like ice is a violation of the Boiler Inspection Act. This was directly opposite to the decision of the Second Circuit in the *Ford* case, which, as above noted, was cited with approval by this court in the *Scarlett* case. Of more significance, however, is the fact that this court in the *Lilly* case repudiated the old theory that it was necessary to prove a structural defect in order to make out a case under either act. It overthrew the cases holding that the presence of foreign matter on a safety appliance did not render said appliance unsafe and thus cause a violation of said acts.

At page 486 the court stated:

> "The Act (Boiler Inspection Act) like the Safety Appliance Act is to be liberally construed in the light of its prime purpose, the protection of employees and others by requiring the use of safe equipment."

It will be noted that the court requires safe equipment as far as both acts are concerned: Oil and grease on a grabiron make said grabiron just as unsafe as if it were bent or broken.

At page 487 the court comments on the same cases cited with approval in the *Scarlett* case, to-wit: *Ford*, *Benson* and *Slater*, and states:

> "From various cases denying recovery under the Act, respondent attempts to extract a general rule

that the Act covers only defects in construction or mechanical operation and affords no protection against the presence of dangerous objects or foreign matter. *But there is no warrant in the language of the Act for construing it so narrowly.* . . ." (Italics ours.)

In view of the fact that several of the cases cited by the court in the *Lilly* case in the above connection were cases involving a violation of the Safety Appliance Act, we believe it is reasonable to suppose that when this court in the *Lilly* case referred to "The Act" it was referring to the entire safety appliance legislation contained in Chapter 1, 45 U.S.C.A., and which bears the title "Safety Appliance and Equipment on Railroad Engines and Cars, and Protection of Employees and Travelers", which includes the various Safety Appliance Acts set forth in Sections 1 to 16 of 45 U.S.C.A. and the Boiler Inspection Act, 45 U.S.C.A., Sections 23 to 34. This Court, in the *Lilly* case, further intimated that said entire chapter, including both the Safety Appliance Act and the Boiler Inspection Act should be given a liberal rather than a narrow construction in order to effectuate the Congressional intent which was to protect railroad workers, passengers and the public from the consequences of unsafe railroad equipment. We feel reasonably sure that had this Court had the *Scarlett* case before it today, it would have decided it differently than the court did in 1937, if it believed that the presence of said rounded brace rod attached to the side of the railroad car immediately behind the ladder rendered an ascent or descent of said ladder unsafe.

Credence for this belief is founded on recent decisions of this Court interpreting the Safety Appliance Acts. In *Baltimore & Ohio R. Co. v. Jackson,* 353 U.S. 325, 1 L. ed. 2d 862, this court held that the train brake provisions of the Safety Appliance Act applied to a motor track car and a push car which it was hauling, and that also the coupling provisions of the Safety Appliance Act applied to said vehicles. At page 329 of said case the court stated:

> "In the light of the prime purpose of the Safety Appliance Acts, i.e., 'the protection of employees and others by requiring the use of safe equipment,' *Lilly v. Grand Trunk Western R. Co.,* 317 U.S. 481, 486, when the railroad uses this type of equipment in this manner—regardless of the label it places on the vehicles—the commands of the Acts must be obeyed."

In *Shields v. Atlantic Coast Line R. Co.,* 350 U.S. 318, 100 L. ed. 364, this court extended the Safety Appliance Act to include a dome running board of a tank car, which it called a "running board" within the meaning of the act, even though the Interstate Commerce Commission had never during the past 60 years considered a dome running board to be a running board such as appears on box cars and other types of cars.

In its opinion, the Court of Appeals in the instant case stated, at page 4, that Congress had seen fit to use language in the Boiler Inspection Act which applies to locomotives different from that in the Safety Appliance Act which applies to cars. It further stated

under the Boiler Inspection Act the requirement is that the locomotive be in proper condition and safe to operate, whereas, under the Safety Appliance Act the requirement is that the cars have secure grabirons. Said court stated that the distinction in the requirements of the two acts appears to be reasonable and gave as its reason therefor the following, which we quote:

> "Under practically all circumstances a locomotive is in the personal charge and custody of the railroad, and an opportunity is provided for the maintenance of it in a safe condition. This may not be true in the case of a car which is used on many lines by many different railroads, and which may have been in the custody of consignees. It would appear to be unreasonable under such circumstances that the railroad should at all times and under all circumstances be under a positive duty to maintain its cars in a safe condition."

In answer to such assertion, we wish to state that for many years it has been the law that railroads are required to inspect all cars, and this is not limited to its own cars, to ascertain that they are in a safe condition to operate. This has been the law since long before the enactment of the Federal Employers' Liability Act.

See:

Baltimore & Potomac R. Co. v. Mackey, 157 U.S. 72, 88, 39 L. ed. 624, 630 (1895).

In that case the court held that a railroad company was under a legal duty not to expose its employees

to dangers arising from defects in foreign cars as may be discovered by reasonable inspection before such cars are admitted into its train. The court stated:

> "It would be most unreasonable and cruel to declare, that while the faithful workmen may obtain compensation from a company for defective arrangement of its own cars, he would be without redress against the same company if the damaged car that occasioned the injury happened to belong to another company."

See also:

Texas & Pacific R. Co. v. Archibald, 170 U.S. 665, 669, 42 L. ed. 1188, 1190 (1898).

Said decisions have been carrying down to recent times.

See:

Lewis v. Union Pacific R. Co., 127 Cal. App. 2d 280, 283, 273 Pac. 2d 706.

Thus, if it is the duty of a railroad to inspect not only its own cars but also those cars it receives from a foreign carrier in order to determine that they are safe to operate, why should it be unduly burdensome on said railroad to inspect said cars for the presence of oil or grease on the grabirons as well as for worn out bolts or nuts on grabirons which may cause it to break when a man steps on it. The latter defect may be more difficult to discover than the presence of grease, yet no one would contend that a violation of the Safety Appliance Act had not been proved when a man was injured upon stepping on such a grabiron which broke

with his weight. The hidden defective nut or bolt renders the grabiron no more unsafe than the presence of grease or oil would. When the courts have gone so far as to say that the word "secure", as used in Section 4 of the Safety Appliance Act means "safe", it surely must mean that said grabiron must be safe in all respects, not merely structurally safe.

Wherefore, we respectfully submit that this Petition for Writ of Certiorari should be granted so that this Court may settle this important question of law which has not yet been passed upon by it.

Dated, San Francisco, California,
March 14, 1961.

THOMAS C. RYAN,
DANIEL V. RYAN,
Attorneys for Petitioner.

(Appendices A, B and C Follow.)

Appendix A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JERRY E. COLLINS, *Appellant,* vs. SOUTHERN PACIFIC COMPANY, *Appellee.*	No. 16,956 Feb. 6, 1961

Appeal from the United States District Court for the Northern District of California Southern Division.

Before HAMLIN and MERRILL, Circuit Judges, and JAMESON, District Judge.

HAMLIN, Circuit Judge:

Jerry E. Collins, appellant herein, filed an action in the United States District Court for the Northern District of California against the Southern Pacific Company, a corporation, appellee herein. The complaint was in two counts. The first cause of action was brought under the Federal Safety Appliance Act, 45 U.S.C.A. §§ 4 and 11,[1] and alleged that appellant was ascending a ladder on a certain box car when he slipped on grease which was on one of the grab irons on said ladder; that he fell to the ground and received the injuries described in the complaint; and that his injuries were proximately caused because appellee used and hauled

[1]Until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars. (45 U.S.C.A. § 4)

. . . [A]ll cars having ladders shall also be equipped with secure handholds or grab irons on their roofs at the top of such ladders . . . . (45 U.S.C.A. § 11)

in interstate commerce the box car in question which was not provided with secure grab irons, contrary to the provisions of 45 U.S.C.A. §§ 4 and 11.

The second cause of action alleged negligence upon the part of the appellee under the provisions of the Federal Employers Liability Act, 45 U.S.C.A. § 51.[2]

At the beginning of the trial, upon appellee's motion, the district court dismissed the first cause of action. The trial then proceeded upon the second cause of action before a jury which rendered a verdict in favor of the appellee. The jurisdiction of the district court was by reason of 45 U.S.C.A. §§ 4, 11 and 51. A timely appeal was taken by appellant to this court, in which appellate jurisdiction is predicated upon 28 U.S.C.A. § 1291.

As stated by appellant, the sole question involved in this appeal is whether the presence of grease or oil on a grab iron constitutes a violation of 45 U.S.C.A. §§ 4 and 11. Appellant's notice of appeal was limited to the order of the district court dismissing the first cause of action.

Appellant made an offer of proof, as to the first cause of action, in which he contended that a grab iron with oil or grease on it is not a secure grab iron as required by the Safety Appliance Act. No contention was made at any time that the grab iron in question was in any way structurally defective. However, appellant contends that the word "secure" means the same as the word "safe", and that therefore, under the Safety Appliance Act, there is a positive duty on the part of the railroad to provide a safe grab iron.

Appellant relies mainly upon the case of *Lilly v. Grand Trunk Western R.R.*, 317 U.S. 481 (1943), and on *Minehart v. Southern Pacific Co.*, 136 Cal.App.2d 486, 288 P.2d 999 (1955). Both of these actions were brought for a violation of the Boiler Inspection

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[2]Every common carrier by railroad while engaging in commerce between any of the several States . . . shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce . . . for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its . . . equipment . . . .

Act, 45 U.S.C.A. § 23.[3] This act provides in part that it shall be unlawful for a carrier to use a locomotive unless said locomotive and its parts are in proper condition and safe to operate. In the *Lilly* case, the evidence showed that the presence of ice on the locomotive rendered it unsafe, and in the *Minehart* case it was held that the presence of grease upon the steps of the locomotive made the locomotive unsafe and was a violation of the Boiler Inspection Act.

The Safety Appliance Act does not contain the same language found in the Boiler Inspection Act, but as has been indicated above requires that the grab irons be "secure".

While this particular question has not been passed upon as far as we know in this circuit, a similar question was presented to the Second Circuit in *Ford v. New York, N.H. & H. R.R.*, 54 F.2d 342 (1931). In that case the evidence showed that the appellant therein started to get on a tender; he took hold of the corner grab iron with his gloved hand; and his hand slipped on the handhold. He claimed that there was grease on the handhold and contended that there was a violation of the Safety Appliance Act and the Boiler Inspection Act.[4] The district court dismissed the action, and on appeal the court of appeals for the Second Circuit said:

> "The tender was lawfully equipped with proper equipment by way of handholds, which was an absolute duty imposed by statutory law. The act of putting grease thereon later may

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[3]It shall be unlawful for any carrier to use or permit to be used on its line any locomotive unless said locomotive, its boiler, tender, and all parts and appurtenances thereof are in proper condition and safe to operate in the service to which the same are put, that the same may be employed in the active service of such carrier without unnecessary peril to life or limb . . . .

[4]The holding that there had been no violation of the Boiler Inspection Act may well be open to question in view of the decisions in **Lilly v. Grand Trunk Western R.R.**, 317 U.S. 481 (1943), and **Minehart v. Southern Pacific Co.**, 136 Cal.App.2d 486, 288 P.2d 999 (1955). That branch of the case, however, is not applicable to the case at bar, for the Boiler Inspection Act applies only to locomotives and tenders. The holding of the **Ford** case that the Safety Appliance Act had not been violated when there was grease on a grab iron was approved by the Supreme Court in **Atchison, T. & S. Fe R.R. v. Scarlett**, 300 U.S. 471 (1937).

have been a violation of the relative duty imposed by general law upon the employer. But counsel has insisted upon resting his case solely upon the claim of violation of the statutory law. If during the operation the safety appliance required by the act was rendered temporarily unsafe by reason of the grease placed thereon, this is not a condition which brings it within the purview of the act."[5]

The Third Circuit has considered a similar question in *Raudenbush v. Baltimore & O. R.R.*, 160 F.2d 363 (3 Cir. 1947). In that case one of the questions answered by the court was the following: "Was the railroad company guilty of a violation of the Safety Appliance Act in failing to make the sill of the gondola car 'secure' by reason of its failure to remove any ice or snow therefrom?" The court answered the question by holding that the presence of snow on the sill of a gondola car "did not constitute a violation of the Act insofar as related to the duty to maintain 'secure' sill steps."

The United States Supreme Court, in *Atchison, T. & S.Fe R.R. v. Scarlett*, 300 U.S. 471 (1937), had occasion to consider the question of whether the presence of a round brace rod immediately behind a ladder on a box car was a violation of the Safety Appliance Act. The Supreme Court reversed the decision of the California Supreme Court, and said:

> "We do not see how it reasonably can be said that the brace rod constitutes a part of the ladder. In itself, it was a contrivance separate and distinct from the ladder, designed and used for a purpose entirely apart from the use of that appliance. The right of recovery, if any, must, therefore, rest upon the effect of the near proximity of the ladder to the rod, neither being in itself defective. The law to be applied to that situation is the common law rule of negligence and not the inflexible rule of the Safety Appliance Act; . . . ."

Congress has seen fit to use language in the Boiler Inspection Act, which applies to locomotives, different from that in the Safety Appliance Act, which applies to cars. Under the Boiler Inspection Act the requirement is that the "locomotive, its boiler, tender, and

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[5]54 F.2d at 343.

all parts and appurtenances thereof," be "in proper condition and safe to operate . . . ." Under the Safety Appliance Act the requirement is that the cars have "secure grab irons"; that they be "equipped with secure sill steps . . ."; and that they have "secure ladders and secure running boards" and "secure handholds or grab irons on their roofs . . . ."

This distinction in the requirements of the two acts appears to us to be reasonable. Under practically all circumstances a locomotive is in the personal charge and custody of the railroad, and an opportunity is provided for the maintenance of it in a safe condition. This may not be true in the case of a car which is used on many lines by many different railroads, and which may have been in the custody of consignees. It would appear to be unreasonable under such circumstances that the railroad should at all times and under all circumstances be under a positive duty to maintain its cars in a safe condition. Of course, under the general provisions of the Federal Employers Liability Act, the railroad may be held responsible for negligence in the maintenance of its cars; but the question of whether in this case the railroad was or was not negligent has been determined by the jury in favor of the railroad, and no appeal has been taken from such finding.

We agree with the holdings in the *Raudenbush*, and *Scarlett* cases, *supra*, and hold that in this case the district court correctly dismissed the first cause of action in plaintiff's complaint.

Judgment affirmed.

(Endorsed) Opinion Filed Feb. 6, 1961.

Frank H. Schmid, Clerk.

United States Court of Appeals
For the Ninth Circuit

No. 16,956

Jerry E. Collins,
Appellant,

vs.

Southern Pacific Company,
Appellee.

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Southern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

(Endorsed) Judgment
Filed and entered: February 6, 1961
Frank H. Schmid, Clerk

Appendix B

FEDERAL SAFETY APPLIANCE ACTS, 45 U.S.C.A.

Section 4. *Grab irons or handholds for security in coupling and uncoupling cars.*

Until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars.

Section 11. *Safety appliances required for each car; when hand brakes may be omitted.*

It shall be unlawful for any common carrier subject to the provisions of sections 11-16 of this title to haul, or permit to be hauled or used on its line, any car subject to the provisions of said sections not equipped with appliances provided for in said sections, to wit: All cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall also be equipped with secure handholds or grab irons on their roofs at the tops of such ladders: *Provided*, That in the loading and hauling of long commodities, requiring more than one car, the hand brakes may be omitted on all save one of the cars while they are thus combined for such purpose.

Appendix C

FEDERAL EMPLOYERS' LIABILITY ACT, 45 U.S.C.A.

Section 51. *Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence; definition of employees.*

Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter,

be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter.

FEDERAL BOILER INSPECTION ACT, 45 U.S.C.A.

Section 23. *Use of unsafe locomotives and appurtenances unlawful; inspection and tests.*

It shall be unlawful for any carrier to use or permit to be used on its line any locomotive unless said locomotive, its boiler, tender, and all parts and appurtenances thereof are in proper condition and safe to operate in the service to which the same are put, that the same may be employed in the active service of such carrier without unnecessary peril to life or limb, and unless said locomotive, its boiler, tender, and all parts and appurtenances thereof have been inspected from time to time in accordance with the provisions of sections 28-30 and 32 of this title and are able to withstand such test or tests as may be prescribed in the rules and regulations hereinafter provided for.